

## ARTICLE 6

### SECTION 1

#### INSTITUTIONAL STATUS

##### 1. GENERAL

Under federal regulations, certain individuals are ineligible for Medi-Cal due solely to institutional status. This section provides staff with clarification and instruction regarding the determination of Medi-Cal eligibility for persons in institutions.

##### 2. PUBLIC INSTITUTIONS

A. The following are identified as public institutions, and Medi-Cal is not available for inmates or residents of these facilities:

- 1) State or Federal prisons;
- 2) Correctional facilities;
- 3) County, city or tribal jails;
- 4) Detention Centers;
- 5) California Youth Authority (CYA) Camps;
- 6) Residential facilities located on the grounds of or adjacent to any large public institution;
- 7) Correctional or holding facilities for prisoners or individuals being held under court order as witnesses;
- 8) Detention facilities, camps, training schools, or any other facility for children determined to be delinquent; or
- 9) Education or vocational training institutions that provide an accredited program for its residents.

**Note:** Persons who reside in public institutions in order to receive educational or vocational training provided by the facility (e.g., a state school for the blind) are not considered "inmates" of public institution and are therefore entitled to Medi-Cal coverage if they are otherwise eligible.

##### 3. NON-PUBLIC INSTITUTIONS

A. The following facilities are **not** public institutions, and residents of these facilities are entitled to Medi-cal coverage if otherwise eligible.

- 1) A medical institution;
- 2) An intermediate care facility;
- 3) A publicly operated residence that serves no more than 16 residents;
- 4) A child care facility that accommodates no more than 25 children;
- 5) An institution for the mentally retarded or persons with related conditions (chronic disability attributed to cerebral palsy or epilepsy or any other condition other than mental illness closely related to mental retardation). Eligibility and placement is usually through the San Diego Regional Center.
- 6) A community care facility which is maintained and operated to provide 24-hour non-medical care for children and/or adults, including but not limited to, the physically handicapped, mentally impaired, incompetent persons, and neglected or abused children.

4. NOTICES OF ACTION (NOA)

- A. Institutionalized individuals are not eligible for Medi-Cal from the date of entry into an institution through the date of release. A ten-day notice is not required prior to discontinuance, as discontinuance due to entry into an institution is not considered an adverse action. Eligibility staff shall immediately discontinue individuals found to be institutionalized/sentenced for a violation of law with an appropriate NOA.

## CHART IDENTIFYING INMATES AND NON-INMATES

THE FOLLOWING ARE CONSIDERED AN INMATE OF A PUBLIC INSTITUTION (ADULT OR JUVENILE) AND ARE <b>NOT</b> ELIGIBLE FOR MEDI-CAL:	THE FOLLOWING ARE NOT AN "INMATE OF A PUBLIC INSTITUTION" AND <b>ARE</b> ELIGIBLE FOR MEDI-CAL:
1. An inmate in a prison.	1. An individual who, after arrest but before booking, is escorted by police to a hospital for medical treatment and held under guard.
2. An inmate of a county, city, or tribal jail.	2. An individual in prison or jail who transfers temporarily to a halfway house or residential treatment facility prior to a formal probation release order.
3. An inmate in a prison or jail: <ul style="list-style-type: none"> <li>a. Prior to arraignment</li> <li>b. Prior to conviction</li> <li>c. Prior to sentencing.</li> </ul>	3. An individual released from prison or jail on probation, parole, or release order: <ul style="list-style-type: none"> <li>a. With a condition of home arrest</li> <li>b. Work release</li> <li>c. Community service</li> <li>d. Outpatient treatment</li> <li>e. Inpatient treatment.</li> </ul>
4. Individuals released from prison or jail due to a medical emergency WHO WOULD OTHERWISE BE INCARCERATED BUT FOR THE MEDICAL EMERGENCY.	4. Individuals released from prison or jail under a court probation order due to a medical emergency.
5. A minor in a juvenile detention center prior to disposition (judgment) due to a criminal activity.	5. A minor in a juvenile detention center prior to disposition (judgment) due to care, protection or in the best interest of the child (e.g., Child Protective Services) if there is a specific plan for that person that makes the stay at the detention center <u>temporary</u> .  This could include those juveniles awaiting placement but still physically present in Juvenile Hall.
6. An individual who is incarcerated but CAN LEAVE prison or jail on work release or work furlough and MUST return at specific intervals.	6. A minor placed on probation by a juvenile court on juvenile intensive probation with home arrest restrictions.
7. A minor placed on probation by a juvenile court on juvenile intensive probation to a secure treatment facility contracted with the juvenile detention center if the secure treatment facility IS PART of the criminal justice system.	7. A minor placed on probation by a juvenile court on juvenile intensive probation to a secure treatment facility contracted with the juvenile detention center if the secure treatment facility IS NOT PART of the criminal justice system.
8. A minor placed on probation by a juvenile court on juvenile intensive probation with specific conditions of release, including residence in a juvenile detention center.	8. A minor placed on probation by a juvenile court on juvenile intensive probation with treatment as a condition of probation: <ul style="list-style-type: none"> <li>a. In a psychiatric hospital</li> <li>b. In a residential treatment center</li> <li>c. As an outpatient.</li> </ul>

## APPENDIX B

1. Penal Code 1367: Those charged with a misdemeanor, but who are incompetent to stand trial, and who will now be treated by a mental health facility.

Penal Code Section 1367 provides that "A person cannot be tried or adjudged to punishment while that person is mentally incompetent." If the judge finds reason to believe that the defendant may be incompetent to stand trial (Penal Code Section 1367(b).), he may then order that the defendant be referred for evaluation and treatment. (Penal Code Section 1367.1(b).) The court "may cause the prisoner to be taken to a facility for 72-hour treatment and evaluation..." (Penal Code Section 4011.6.)

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According to federal regulation, an inmate of a public institution means a person who is living in a public institution. (CFR Section 435.1009.) An inpatient is one who receives, or is expected to receive, room, board, and professional services for a 24-hour period or longer. (42 CFR Section 435.1009.) Admission into a mental health facility for a 72-hour treatment and evaluation period appears to be sufficient to constitute institutional status and make the individual ineligible for Medi-Cal. If evaluation results in placement in a mental health facility for treatment, then it is clear that the individual is not eligible for Medi-Cal. (42 CFR Section 435.1008.) "FFP is not available in expenditures for services provided to ... individuals ... who are patients in an institution for ... mental diseases." If, however, the defendant is referred for outpatient treatment, he would not be considered an inmate of a public facility, and could be eligible for Medi-Cal benefits.

2. Penal Code 1372: Those felons incompetent to stand trial, previously treated at the state hospital, but whose competency has been restored and are returned to the Inpatient Unit to stand trial.

Penal Code Section 1372 concerns defendants who have been restored to competence. When a defendant is returned to court with a certification that competence has been regained, the court shall determine whether the person is entitled to be admitted to bail or to be released on his own recognizance status, or on the defendant's promise or on the promise of a responsible adult to secure the person's appearance for further proceedings (Penal Code Section 1372(d)). An individual who is released from incarceration on bail, on his or her own recognizance, or upon a promise to appear for future proceedings, does not appear to be an inmate of a public institution, and may be eligible for Medi-Cal. If not released on bail, on his or her own recognizance, or on a promise to appear for future proceedings, the individual is likely to be held in a prison or jail prior to conviction or sentencing. The individual would then be an inmate of a public institution, and would not be eligible for Medi-Cal.

The determination of eligibility for Medi-Cal benefits is dependent upon status as an inmate of a public institution. Individuals to whom Penal Code Sections 1367 and 1372 apply may be eligible for Medi-Cal.